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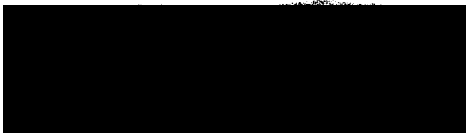
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE:



Office: CALIFORNIA SERVICE CENTER

Feb 02 2004
Date:

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann
for M. Kuyper

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on information contained in a Form I-589, Request For Asylum, and a Form G-325A, Report of Biographic Information, which the applicant provided to the Service (now Citizenship and Immigration Services, or CIS) as a part of a separate application for asylum in the United States, [REDACTED]

On appeal, the applicant reaffirmed his claim to have performed qualifying agricultural services. The applicant argued that he had submitted sufficient documentation to establish his eligibility and meet his burden of proof by showing that the claimed employment occurred under the standard set forth in *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.). The applicant submitted two affidavits in support of his claim of agricultural employment, as well as a Freedom of Information Act request for a copy of the record of proceedings.

The record shows that CIS complied with the request and mailed a copy of the record to the applicant on August 20, 2003. The record reflects that as of the date of this decision, the applicant has failed to submit any additional material to supplement his appeal. Therefore, the record shall be considered complete.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act (INA) and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On the Form I-700 application, the applicant claimed 97 man-days of qualifying agricultural services for Modesto Carrillo at 4K Farms in Merced, California from May 1, 1985 to May 1, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and a separate employment statement, both purportedly signed by Modesto Carrillo.

In attempting to verify the applicant's claimed employment, CIS acquired information which contradicted the applicant's claim. The record shows a Form I-589, Request for Asylum, was submitted to CIS by the applicant on November 25, 1986. The applicant included a Form G-325A, Report of Biographic Information, in which he specified that he resided in Jalapa, Guatemala from 1949 to May 1986. The applicant also indicated that he began residing in the United States in Hawthorne, California in May 1986, and that his sole employment in this country consisted of housekeeping from June 1986 to November 21, 1986, the date the Form G-325A was executed. The applicant failed to acknowledge that he either resided in the United States or performed qualifying services in the United States prior to May 1986 on the Form G-325A. In addition, the applicant specified on the Form I-589 asylum application that he departed his country of nationality, Guatemala, on May 10, 1986, and indicated that the date of his last arrival in the United States was May 15, 1986, when he entered this country without inspection at or near San Ysidro, California. On the Form I-589, the applicant also indicated that he attended Escuela Nacional in Guatemala at the elementary school level through sixth grade from 1956 to 1962. The information provided by the applicant in the prior asylum application directly contradicted the claim of employment he put forth in the subsequent Form I-700 application and supporting documentation.

On June 15, 1992, CIS advised the applicant in writing of the adverse information, and of CIS's intent to deny the application. The applicant was granted thirty days to respond.

In response, the applicant submitted a statement in which he asserted that the Form I-589 asylum application asked the date of his last arrival in the United States, rather than the date of his first arrival in this country. The applicant contended that the date of his first arrival in this country was November 1984, and that he returned to Guatemala for a few days to visit his sons on May 5, 1986. The applicant claimed that he then returned to the United States in "the last days of May 1986." The applicant declared that information contained in the Form I-589 asylum application reflects this second subsequent entry. The applicant stated that any misinformation contained in the Form G-325A resulted from the fact that an individual other than he had prepared the document. However, the applicant failed to provide any evidence that would tend to corroborate any of the claims he put forth in his statement. In addition, the applicant's explanation cannot be considered as adequate because of the numerous inconsistencies, discrepancies, and contradictions that arise when his claim of agricultural employment is examined in light of the biographic information he provided in the prior asylum application.

The applicant submitted two affidavits signed by [REDACTED] respectively. In his affidavit, [REDACTED] stated that he had personal knowledge that the applicant worked 97 man-days of qualifying agricultural services at 4K Farms in Merced, California as a result of the acquaintanceship that developed through their membership in the same church. In her affidavit, [REDACTED] stated that she could attest that the applicant worked 97 man-days of qualifying agricultural services at 4K Farms in Merced, California because she had witnessed him working on occasion. However, neither [REDACTED] specified either the name of the applicant's employer or the dates such work purportedly occurred. Without such information, the probative value of these affidavits is questionable at best.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application.

On appeal, the applicant reaffirmed his claim to have performed qualifying agricultural services. In support of his claim, the applicant submitted two new affidavits signed by [REDACTED] respectively. In their affidavits, both [REDACTED] reiterated the information previously provided in each of their initial affidavits regarding the applicant's agricultural claim of employment. However, in their new affidavits, both [REDACTED] indicated that the applicant's agricultural employment occurred from May 1, 1985 to May 1, 1986. While both affiants merely reaffirm the applicant's claim of employment, neither affiant addressed the fact that he provided biographic information in a prior asylum application that directly contradicted his claim to have performed qualifying agricultural services during the eligibility period.

The applicant argued that he had submitted sufficient documentation to establish his eligibility and to meet his burden of proof by showing that the claimed employment occurred under the standard set forth in *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

The question of whether the applicant has met his initial burden of proof is not at issue, but rather the issue is whether the applicant has met his secondary burden of proof in overcoming the adverse information he himself provided in a separate asylum application. Upon a showing that the claimed employment occurred through a just and reasonable inference of the evidence submitted, the burden shifts to CIS to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable. 8 C.F.R. § 210.3(b). Upon a showing that the inference from the applicant's evidence is not reasonable, the burden of proof then shifts to the applicant to overcome the adverse information.

The adverse information provided by the applicant in the Form I-589 and the Form G-325A regarding his dates of residence in this country and his home country of Guatemala, as well as the dates and type of employment in which he engaged in the United States, clearly negated any inference from the original evidence that the claimed

agricultural employment for N [REDACTED] occurred. Consequently, the burden of proof shifted back to the applicant, who subsequently failed to submit, on appeal, sufficient credible evidence to meet his secondary burden of proof of overcoming such adverse information.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, id.

The contradictory information provided by the applicant in both the Form I-589 asylum application and the corresponding Form G-325A regarding his residence and employment in the United States, directly contradicts the claim of employment put forth in the Form I-700 application and supporting documentation. The applicant has not overcome such derogatory evidence. Therefore, the documentary evidence submitted by the applicant relating to his application for special agricultural worker status cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to establish credibly the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.